

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:02CR45

UNITED STATES OF AMERICA

vs.

PATRICK TODD BURLESON

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ORDER

THIS MATTER is before the Court on the Defendant's motion to revise the Statement of Reasons filed with the Defendant's presentence report.¹ No response or objection to the relief sought has been filed by the Government.

Defendant alleges that the Statement of Reasons prepared in his case conflicts with the Court's rulings at his sentencing hearing. The questioned portion of the Statement of Reasons reads:

¹ At the time Defendant was sentenced in 2003, the Statement of Reasons was prepared by the Court and placed in the custody of the U.S. Probation Office along with Defendant's presentence report. With the advent of electronic filing, the Statement of Reasons is now filed electronically, albeit under seal.

The court adopts the factual findings and guideline application in the presentence report except . . . : *The 2-level enhancement pursuant to USSG § 2D1.1(b)(1) is sustained.*

Statement of Reasons, received by the U.S. Probation Office October 15, 2003 (emphasis added). Section 2D1.1(b)(1) provides for a two-level enhancement to a defendant's sentence for a firearm possessed during a drug offense. Defendant states the firearm enhancement was withdrawn by the Government at sentencing and that the Court ordered the presentence report to be amended accordingly. In addition, the Defendant states this enhancement has detrimental effects on his incarceration within the Bureau of Prisons and asks the Court to revise the Statement of Reasons to reflect the intent of the Court at sentencing. **Motion, *supra*.**

The transcript of the sentencing hearing corroborates Defendant's recollection of events.

Defense counsel: With the consent of the parties, Your Honor, in speaking with Ms. Rose, we've agreed that the two-point enhancement for the firearms does not apply in this case, and the objection regarding the organizer and leader is withdrawn. So that would leave the offense level at a level 35, Your Honor.

The Court: All right. . . . [L]et the record reflect that the Presentence Investigation Report is

amended to reflect that agreement between the parties.

. . .

AUSA Rose

[O]ne of the reasons for the concession with the two-level enhancement for the gun is not necessarily a factual concession but it is one that addresses the amendments to the [motion for downward departure] based upon the trial testimony that he provided and also to reward this defendant in a further way, because, as you know, *the gun enhancement could significantly impact his placement within the Bureau of Prisons*. So, in case the court was wondering why there was no mention within the 5K for further downward departure related to his trial testimony, it's because we balanced that out with concessions to the two-point firearm enhancement for that testimony and, of course, are looking at his future in the BOP.

Transcript of Sentencing Proceedings, filed August 14, 2006, at 3-4, 5-6 (emphasis added). Therefore, instead of the two-point firearms enhancement being sustained, the Statement of Reasons should have reflected that such enhancement was withdrawn.

The Federal Rules of Criminal Procedure provide that the Court “may at any time correct a clerical error in a judgment, order, *or other part of the*

record, or correct an error in the record arising from oversight or omission.”

Fed. R. Crim. P. 36 (emphasis added). The statement of reasons must conform to a court’s oral pronouncement of judgment. ***See United States v. Cardwell*, 220 F. App’x 213, 214 (4th Cir. 2007)** (“We thus vacate and remand Cardwell’s sentence for the district court to correct its ‘Statement of Reasons’ under Rule 36. The Court should correct its ‘Statement of Reasons’ form to correspond to its oral pronouncement at sentencing.”).

IT IS, THEREFORE, ORDERED that the Defendant’s motion to revise the Statement of Reasons filed herein is **ALLOWED**, and the Statement of Reasons shall be amended as provided in this Order.

IT IS FURTHER ORDERED that the Clerk transmit a copy of the Amended Statement of Reasons to the Warden of the correctional facility where the Defendant is currently incarcerated.

Signed: January 23, 2008



Lacy H. Thornburg
United States District Judge

